Addressing Extreme Working Hours in China: The Contributions of Regulation Theory

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I Introduction

The dire social and environmental consequences of rapid economic growth in Asia are becoming a regular theme in commentary from international institutions, foreign governments, non-governmental organisations (‘NGOs’) and the media. China is at the forefront of global concern.1 Criticisms from developed countries are frequently accompanied by lists of policy recommendations which, to the casual Western observer, frequently seem self-evident. These recommendations often include proposals to enact laws emulating Western statutes.

Of course, countries like China do need to devise effective responses to the ugly side-effects of economic transformation: severe environmental pollution, gross occupational health and safety hazards, cavalier displacement of land users, and so on. Given the rich experience of social and environmental regulation now accumulated by developed nations, it might be thought that the lists of policy recommendations would be most useful; developing nations now have a head start in formulating measures likely to reduce the acute problems that beset industrialisation. It would seem perverse for developing countries to relive the history of the wealthy nations, spending painful decades, even centuries, in working out how to make mines safer or rivers cleaner. This is especially the case given that the relatively recent nature of their rapid economic expansion has meant that production frequently takes place using highly sophisticated technology that was not available when wealthy nations were in an earlier phase of development.2

Yet while there has been, together with the transfer of technology, extensive transplantation of legal rules and institutions to developing nations dealing with environmental and labour issues, governments in these nations still face widespread public unrest arising from workplace disputes, poorly controlled pollution and the displacement of citizens. This unrest not infrequently manifests itself in violent conflict. The reasons for the failure of the legal transplants, or their failure to operate as intended, are many and well known. They include contextual factors such as adverse economic incentives, political expediency, corruption, counterproductive social norms and practices, and inadequate enforcement measures (which are in turn

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1 See, for example, Environment Directorate of the OECD, Environmental Performance Review of China (OECD, Paris, 2007).
2 The equipment used by Chinese manufacturing workers is often well in advance of that operated in similar industries in developed states.
often a product of a lack of financial resources and staff). These factors tend to
derail legal measures, even well designed ones.

Plainly enough, however, it may be the structure of the transplanted law itself that
is partly to blame for the ineffectiveness of the law in the face of socially disastrous
behaviours, and not just the context in which it operates. While even a very well
constructed legal intervention may still be flaunted, it may at least have greater
prospects of improving a bad situation than legal measures that, for example,
deride themselves through excessive qualifications and exceptions. If this is so,
then the question is how can law and its implementation be redesigned with a view
to making it more effective?

Because of the complexity of the social problems being addressed there cannot be
one global (or stable) answer to such a question. Nonetheless, in the belief that
attempting an answer in relation to a specific issue may sometimes shed light on the
possible resolution of other concerns, in this chapter I will explore how the problem
of working time regulation in the People’s Republic of China (‘PRC’) might be
better approached.

China’s regulatory approach to working time is evidently influenced by foreign
models, although there has been very significant domestic adaptation. My suspi-
cion is that regulation might be more effective if it was shaped less by international
standards and instead responded more directly to the problem as it manifests itself
locally. This pessimistic conclusion about the appropriateness of the substantive
legal borrowing does not, however, equate to a rejection of the relevance and utility
of Western regulatory experience. On the contrary, I contend that some aspects of
the Western regulatory literature have much to contribute to the resolution of the
working time issue, and, most probably, to many other environmental and labour
problems.

Further, I call into question the alleged benefits of common law models of regulation
as the best practice for legal change. I explain that the ‘new’ legal origins
argument (raised by a group of economists based in the United States) is unpersua-
sive in Part V of this chapter. Drawing on the conclusions of my empirical case
study of working hours in China, I contend that advocating common law models as
best practice dangerously simplifies the legal change debate, at least in the context
of Chinese working time regulation. Instead I argue that regulation needs to be
cognisant of local contextual and regulatory conditions to maximise the potential
benefits of regulatory reform.

II THE REGULATION OF WORKING HOURS IN CHINA

Excessive working hours occur in many Chinese industries. The sector in which it
attracts most international attention — commonly through shock stories about
sweatshop conditions — is export oriented manufacturing, particularly clothing.